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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-192

JAMES JOHNSON,

Petitioner,

versus

OIL TRANSPORT COMPANY, INC.,
THE M/V FLYING A, AND BENDER
WELDING AND MACHINE COMPANY, INC.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR REHEARING

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Of Counsel

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PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an order (1) vacating its denial of the Petition for Writ of Certiorari, entered on October 12, 1971, and (2) granting the Petition. As grounds for this Motion, Petitioner states the following:

1. The Petition for a Writ of Certiorari in *C. J. Delome v. Union Barge Line, Company v. Platzer Shipyard, Inc.*, October Term 1971, No. 71-454.

There is presently pending before the Court, *Delome v. Union Barge*, No. 71-454. In *Delome*, the Fifth Circuit Court of Appeals considered facts similar to those of the instant case and reached the same erroneous conclusions of law. A Petition for Certiorari has been applied for in that case which is presently pending before this Court. The American Trial Lawyers Association has filed a brief Amicus Curiae in support of *Delome's* Petition which is also pending.

In *Delome* the Petitioner was engaged in replacing metal frames in the forward rake of a barge in navigation. It was found that he was not performing the traditional work of a seaman and was therefore owed no warranty of seaworthiness.

In the instant case, James Johnson was using a sandblaster to remove old paint (scale) and rust from the hull of a vessel in preparation for painting. It was held by the Fifth Circuit Court of Appeals that Johnson was not performing the traditional work of seamen.

Petitioner suggests that should this Court grant the Petition for a Writ of Certiorari in the *Delome* case, and find that *Delome* is entitled to the protection of the warranty of seaworthiness, then a clarification of the instant case will be necessary.

Petitioner herein respectfully shows that Counsel for the Petitioner *James Johnson* and Counsel for Petitioner *C. J. Paul Delome* have no objection to both cases being consolidated for argument.

It is therefore respectfully requested that this Court reconsider its order denying the Petition for Writ of

Certiorari in light of the Petition pending in *Delome v. Union Barge Line*, No. 71-454.

Respectfully submitted,

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PROOF OF SERVICE

I, Ross M. Diamond, Jr., one of the attorneys for Petitioner herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the ____day of November, 1971, I served three copies of the foregoing brief of Petitioner on Oil Transport Company Inc., and Bender Welding and Machine Company Inc., by mailing to same in duly addressed envelopes with first class postage prepaid to Hon. Brunswick Deutsch, 1700 Hibernia Bank Building, New Orleans, Louisiana 70112 and to Hon. A. Clay Rankin, 30th Floor First National Bank Building, Mobile, Alabama 36601, Attorneys for Respondents.

ROSS M. DIAMOND, JR.